

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAIL ROOM

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In the Matter of	)	
	)	
Global NAPs, Inc. Petition for Preemption	)	CC Docket No. 99-354
of Jurisdiction of the	)	
Massachusetts Department of	)	
Telecommunications and Energy	)	
Pursuant to Section 252(e)(5) of the	)	
Telecommunications Act of 1996	)	

### ORDER ON REVIEW

**Adopted: February 15, 2001**

**Released: February 21, 2001**

By the Commission:

#### I. INTRODUCTION AND BACKGROUND

1. This *Order* addresses the application of Global NAPs, Inc. (GNAPs) for review<sup>1</sup> of the Common Carrier Bureau's Memorandum Opinion and Order in the above-captioned proceeding.<sup>2</sup> The Massachusetts Department of Telecommunications and Energy (MDTE) and Bell Atlantic filed pleadings in response to GNAPs' application for review.<sup>3</sup>

2. In the *GNAPs Preemption Order*, the Common Carrier Bureau denied GNAPs' petition filed pursuant to section 252(e)(5) of the Telecommunications Act of 1996.<sup>4</sup> In that petition, GNAPs sought Commission preemption of jurisdiction over a complaint filed before the MDTE by GNAPs against Bell Atlantic. The Bureau denied GNAPs' petition based upon a final action taken by the MDTE on February 25, 2000, dismissing the interconnection complaint filed by GNAPs. The Bureau determined that the MDTE had not "failed to act" upon the GNAPs/Bell

<sup>1</sup> Global NAPs, Inc. Application for Review (filed Apr. 5, 2000) (GNAPs Application for Review).

<sup>2</sup> *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the Massachusetts Department of Telecommunications and Energy Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 99-354, Memorandum Opinion and Order, 15 FCC Rcd 4943 (2000) (*GNAPs Preemption Order*).

<sup>3</sup> Specifically, on May 10, 2000, both Bell Atlantic and the MDTE filed oppositions to GNAPs' application for review. On May 25, 2000, GNAPs filed a response to the MDTE and Bell Atlantic oppositions.

<sup>4</sup> 47 U.S.C. § 252(e)(5). Section 252(e)(5) states that if a state commission fails to act to carry out its responsibilities under this section of the Act in any matter or proceeding under this section, this Commission shall issue an order within 90 days preempting the state and assuming responsibility for the matter or proceeding.

Atlantic interconnection dispute by virtue of the MDTE's February 25, 2000 order.<sup>5</sup> For the reasons discussed below, we affirm the Bureau's *GNAPs Preemption Order* and deny GNAPs' application for review.

## II. DISCUSSION

3. GNAPs contends that the Bureau "accepted without examination the [MDTE's] claim that it had mooted Global NAPs' complaint against BA."<sup>6</sup> GNAPs also argues that because its preemption petition did not present "matters which are minor or routine or settled in nature,"<sup>7</sup> it could not be decided by the Bureau under section 0.5 of our rules.<sup>8</sup> According to GNAPs, the preemption petition did not raise "minor, routine or settled" issues.<sup>9</sup> Similarly, because section 252(e)(5) requires a Commission level decision within 90 days, GNAPs contends that the Bureau order represents an attempt to circumvent statutory requirements.<sup>10</sup>

4. Based upon the record in this proceeding, we deny GNAPs' application for review. Our rules make clear that "[t]he party seeking preemption [pursuant to section 252(e)(5)] must prove that the state [commission] has failed to act to carry out its responsibilities under section 252 of the Act."<sup>11</sup> We conclude that the Bureau correctly determined that, in view of the MDTE's February 25, 2000, order, GNAPs failed to provide a basis for finding that Massachusetts had "failed to act" under section 252(e)(5) of the Act. Additionally, we conclude that the Bureau correctly declined to examine the underlying reasoning of the MDTE in its review of the GNAPs petition. As noted in the Bureau's order addressing GNAPs' Massachusetts complaint, neither section 252(e)(5) of the Act nor section 51.801<sup>12</sup> of the Commission's rules focuses on the validity of state commission decisions.<sup>13</sup>

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<sup>5</sup> *GNAPs Preemption Order*, 15 FCC Rcd at 4946, para. 7.

<sup>6</sup> GNAPs Application for Review at 7.

<sup>7</sup> *Id.* at 14-15.

<sup>8</sup> *Id.* See also 47 C.F.R. § 0.5(c).

<sup>9</sup> GNAPs Application for Review at 15.

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 51.803(b); see also *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey*, CC Docket No. 99-154, Memorandum Opinion and Order, 14 FCC Rcd 12530, 12533, at para. 6 (1999) (*GNAPs/New Jersey Order*).

<sup>12</sup> 47 C.F.R. § 51.801. Section 51.801 sets forth the circumstances under which this Commission considers that a state commission has failed to act for purposes of section 252(e)(5) of the Act.

<sup>13</sup> *GNAPs Preemption Order*, 15 FCC Rcd at 4947, para. 9; see also *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc.*, CC Docket No. 99-198, Memorandum Opinion and Order, DA 99-1552, at para. 18 (rel. Aug. 5, 1999) (*GNAPs/Virginia Order*).

5. Similarly, we conclude that, by acting within 90 days of the filing of the GNAPs petition, the Bureau satisfied the requirements of section 252(e)(5) of the Act. Section 0.5(c) of the Commission's rules permits the Commission to delegate authority to the Common Carrier Bureau on "matters which are minor or routine or settled in nature and those in which immediate action may be necessary."<sup>14</sup> In delegating authority to the Chief, Common Carrier Bureau, section 0.291(a)(2) of the Commission's rules prohibits the Chief from acting on applications or requests which present novel questions of law, fact or policy "which cannot be resolved under outstanding precedents and guidelines."<sup>15</sup> Both the Bureau and the Commission have previously addressed the preemption issues raised in this proceeding in orders addressing similar section 252(e)(5) petitions filed by GNAPs involving interconnection disputes with Bell Atlantic in New Jersey and Virginia.<sup>16</sup> Furthermore, GNAPs' application for review acknowledges that the Commission's decision in the *MCI Preemption Order*<sup>17</sup> should be controlling in this case.<sup>18</sup> Thus, this matter did not present novel questions of law or fact, and could be resolved under outstanding precedent. It was therefore proper for the Bureau to address the GNAPs section 252(e)(5) petition at issue here under delegated authority. Because the Bureau was acting properly on delegated authority, the 90-day requirement of section 252(e)(5) of the Act was met.

### III. CONCLUSION

7. For the foregoing reasons, we affirm the Bureau's *GNAPs Preemption Order* and deny GNAPs' application for review of that order.

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<sup>14</sup> 47 C.F.R. § 0.5.

<sup>15</sup> 47 C.F.R. § 0.291(a)(2).

<sup>16</sup> See *GNAPs/New Jersey Order*, 14 FCC Rcd at 12538-12539, paras. 16-19; *GNAPs/Virginia Order* at paras. 16-19.

<sup>17</sup> *Petition of MCI For Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 12 FCC Rcd 15594 (1997) (*MCI Preemption Order*).

<sup>18</sup> GNAPs Application for Review at 15.

**IV. ORDERING CLAUSES**

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 252 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4 (i), 252, and sections 1.115(g) and 51.801(b) of the Commission's rules, 47 C.F.R. §§ 1.115(g), 51.801(b), the application for review filed by Global NAPs, Inc. on April 5, 2000, IS DENIED.

9. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary